

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

D-1 DR. RAJENDRA BOTHRA

D-3 DR. GANIU EDU

D-4 DR. DAVID LEWIS

D-5 DR. CHRISTOPHER RUSSO,

Case No. 18-20800

Hon. Stephen J. Murphy, III

Defendant.

/

**JURY TRIAL EXCERPT: VOLUME 24**

BEFORE THE HONORABLE STEPHEN J. MURPHY, III  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan 48226  
Friday, June 24, 2022

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(Appearances continued next page)

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TABLE OF CONTENTS

Page

CLOSING STATEMENT BY MR. MARGOLIS

4

EXHIBITS

Identification

Offered

Received

NONE

1 Detroit, Michigan

2 Friday, June 24, 2022

3 — — —

4 (Proceedings in progress at 1:39 p.m., all parties  
5 present, jury present)

6 THE COURT: Mr. Margolis, if you'd like to proceed,  
7 right ahead.

8 MR. MARGOLIS: Thank you, Judge. I know Your Honor  
9 will advise me if I'm going over or...

10 THE COURT: Well, we were thinking maybe you wouldn't  
11 even get that far.

12 MR. MARGOLIS: I know and it's possible.

13 Good afternoon, ladies and gentlemen. What a long,  
14 strange trip it's been, huh? I want to start by thanking you  
15 all. You've been an amazing jury, I can tell. You take notes,  
16 you stay alert, you pay attention. In 26 years I think you're  
17 probably the best jury, and I don't tell every jury that by the  
18 way. It's very clear to me and I think everyone here that you  
19 all understand and appreciate the important role, the hugely  
20 important, weighty role that you are playing in our criminal  
21 justice system, so thank you for that, each and every one of  
22 you.

23 And we're almost done. Your time to gather and  
24 discuss is upon us soon. But before you go, I have one last  
25 chance to talk with you all, discuss what the government

1 actually presented to you and say my piece about why you should  
2 end this long nightmare for Dr. Russo.

3 From the beginning of our journey together I talked  
4 to you about a condition we all have experienced one time or  
5 another: pain. I think it is important for us to end our  
6 journey together in the same fashion. What does it mean to be  
7 in pain? What does it mean to suffer chronic pain? The  
8 condition of pain, another person's experience in coping and  
9 dealing and living with their chronic pain is the focal point  
10 of this case, make no mistake about it, from both sides. I  
11 know that that may have sometimes gotten lost in the mix with  
12 all the witnesses and exhibits, but the condition of pain and  
13 its impact on people's actions brings us together right here,  
14 right now.

15 And there's actually a lot of agreement -- am I okay,  
16 Ms. Cavanagh?

17 THE COURT REPORTER: Yes.

18 MR. MARGOLIS: There's some agreement in this case  
19 with much of what I said to you all in my opening statement,  
20 agreement on some of the big issues. So I want to talk about  
21 these important, uncontested facts we can take from this case,  
22 themes even.

23 As I discussed in the beginning, chronic pain is  
24 real. Real people suffer chronic pain. Chronic pain is  
25 defined, and we've heard it over and over, as pain that lasts

1     beyond -- I think they give the three months is the -- the  
2     standard, but it's -- I call it pain beyond the normal recovery  
3     period one would expect, typically expect from an injury or an  
4     episode involving acute pain. More than a few months I think  
5     is -- is the consensus. Tens of millions of Americans suffer  
6     from chronic pain, all walks of life, all races, all  
7     ethnicities, all genders. Pain doesn't discriminate.

8             It is a sad but true fact that millions of Americans  
9     don't have health insurance. This group, especially those in  
10    our more disadvantaged communities, are often lower income, and  
11    Medicaid and Medicare is intended or does cover these lower  
12    income citizens, the elderly and the disabled, those who don't  
13    have private health insurance as well.

14            It's a fact of this case that many health care  
15    practices, many providers don't take these patients, don't  
16    serve these uninsured, underinsured people. There's no law  
17    requiring them to do that, to accept these low reimbursement  
18    rates that we heard about. It's a sad reality but also an  
19    important fact to remember in this trial.

20            Those without private insurance, the tens of millions  
21    of them, must find a practitioner that takes Medicare or  
22    Medicaid. Are those people, are these people not entitled to  
23    treatment by advanced pain specialists solely because of their  
24    income, their age, this disability or lack of health insurance?  
25    Of course they are. And therefore, of course a specialized

1 pain practice serving our massive uninsured population is going  
2 to be busy. No one contested this fact, the reality of our  
3 national health care crisis.

4 Many pain patients are dealing with multi-faceted  
5 pain, psychosocial issues. Just look at who the government  
6 called to the stand. That's only a tiny sample. For these  
7 folks, everyday activities are difficult. Sitting on a toilet  
8 from that one witness can be excruciatingly painful and  
9 difficult. Ms. Souligney mentioned, or I believe it was,  
10 sitting or just rising to stand up is painful and challenging.

11 These folks also face, and I talked about this in  
12 opening, an unconscious or implicit bias. I ask you to resist  
13 that implicit bias. Trust their complaints of pain. No one  
14 during this trial, including learned counsel on the other side,  
15 took issue with the reality of any patient witness's chronic  
16 pain or the debilitating effect it had on their lives. It was  
17 also not contested that chronic pain patients are often higher  
18 risk and like many of us have preexisting conditions. These  
19 are not pediatric clinics.

20 Remember what Dr. Chiodo said the other day. Chronic  
21 pain patients can be difficult, threatening, commonly  
22 presenting with several multiple pain generators. What exactly  
23 is a pain doctor to do, turn and walk away, refuse to treat  
24 them? No. You do the best you can, you try and work with the  
25 patient, as difficult as he or she may be. That is your job,

1 that is what you signed up to do.

2 People in pain can be hostile and threatening.  
3 Security is absolutely necessary in this business. Remember  
4 Dr. Chiodo's testimony about the security protocols at the  
5 University of Michigan, in safe and secure Ann Arbor no less.  
6 Is it wrong for a pain medicine practice in Warren to also want  
7 security on the premises to protect its staff, its doctors, its  
8 patients, its nurses, its PAs, its chiropractors, its PTs or  
9 physical therapists?

10 The government and the -- in opening and during the  
11 trial they -- they talked a lot about it, but it -- it's -- it  
12 wasn't spoken much yet by Ms. McMillion, but the government  
13 spins this accepted fact of life and told you in their opening  
14 to believe that the Pain Center had security due to some  
15 illicit activities that were going on there or outside in the  
16 parking lot. There was no actual evidence of drug dealing, no  
17 evidence of a wild and lawless parking lot or of a wild and  
18 lawless waiting room, no actual evidence of pills being sold.  
19 Agents Tolan, Link, Osterling, Kroger and Peterson all  
20 repeatedly went to the Pain Center. They staked it out for  
21 months, maybe years. All -- they had cameras and video  
22 equipment. They showed you nothing, nothing at all. They  
23 testified to seeing nothing of the sort that we were promised.

24 The only evidence offered you on this unfulfilled  
25 promise of the government's was that tiny bit of testimony from



1 Dr. Backos. Do you remember that? He said he saw the woman on  
2 her cell phone, and I -- I quoted it, "looking like she was  
3 calculating something." That was their evidence of drug  
4 dealing outside the Pain Center.

5 Remember the government's promise to you in opening  
6 statement. They went to great lengths to paint this picture of  
7 the Pain Center as a fraud factory. That was mentioned many  
8 times. I think Mr. Weiss talked about the buckets of -- three  
9 buckets of fraud. We didn't hear it from Ms. McMillion in her  
10 closing; maybe we'll hear it in the rebuttal. Long lines,  
11 overcrowded parking lots, waiting rooms with people sitting on  
12 each other. They told you people would see a pain doctor, go  
13 get their prescription and then sell their pills right there in  
14 the parking lot. That's what they told you. They told you  
15 "that's why we had a security guard, the drug dealing from the  
16 very prescriptions these doctors wrote," and that's why it was  
17 necessary they argued to you.

18 However, Dr. -- Dr. Chiodo explained the reality of  
19 what pain practices face today. He described his clinic's use  
20 of panic buttons, roaming security on campus at the U of M.  
21 Pain clinics need security, it's as simple as that. It's a  
22 fact of life, sadly.

23 The government told you that -- in their fact -- in  
24 their argument that the Pain Center catered to drug dealers and  
25 addicts. They -- they -- they offered you testimony, and --

1 and it was probably some of the closest they get to their  
2 argument, is that some patients smelled of marijuana. Okay. I  
3 can accept that. But this is not a marijuana case. Marijuana  
4 is legal for recreational use in Michigan. It's been legal for  
5 medical use since 2008. This was a pain clinic. The fact that  
6 the waiting room smelled like marijuana on occasion is a  
7 non-issue. Patients often brought family members with them.  
8 The smell lingers. We all know that from living in this state.  
9 Every -- they presented no evidence -- no drug dealers or  
10 addicts as patients, as -- as witnesses.

11 Every single patient witness whom the government  
12 called to testify admitted they suffer chronic pain. They  
13 admitted the pain they experience is real and debilitating to  
14 them and that they went to the Pain Center for treatment of  
15 their chronic pain and that -- and also that the doctors at the  
16 Pain Center attempted to treat their chronic pain. Those are  
17 the facts, that is the uncontested evidence, and by and large,  
18 it's given to you by the government. These simple, uncontested  
19 facts should guide every decision you make in this case. It  
20 should answer every question you have and really make your  
21 decision easy.

22 Let's talk about their inability to prove their case  
23 and the failure to deliver on other promises. Witness after  
24 witness the government went to -- with witness after witness  
25 the government went to great lengths to try and hammer home its

1 argument that every patient got controlled substances, that no  
2 patients were given a physical exam, right? You -- you've  
3 heard that. It's been a common and repeated argument  
4 throughout -- throughout the -- the trial and it's -- it's  
5 simply not true.

6 Remember too, this is something that I thought about  
7 when Ms. McMillion was speaking and they've been confusing this  
8 issue throughout the trial about you can't give them a  
9 prescription without -- without having a physical exam, a  
10 comprehensive exam. They're trying to get you to believe that  
11 every time you go to a doctor and pick up a script, that  
12 they're supposed to provide you a comprehensive physical exam.  
13 That's not the law, that's not the standard of care. You get  
14 your initial comprehensive physical exam. That should be done,  
15 I'm not going to say it shouldn't be. And guess what? We're  
16 going to talk about every patient Dr. Russo saw received a  
17 comprehensive physical -- physical exam either from him or Dr.  
18 Kufner or Dr. Bothra.

19 So reject their confusing argument that every time  
20 you go see a doctor for a pill, forget your pills, you need a  
21 comprehensive physical exam. You don't. You need one; you  
22 don't need one every time. However, every patient Dr. Russo  
23 saw received a comprehensive history and physical exam on their  
24 initial visit. That's when the treatment plan was discussed  
25 and initiated.

1 Remember the testimony the other day from -- when  
2 I -- when Dr. Chiodo was on the witness stand, it was last  
3 week, and we were talking about patient Michelle Morzynske who  
4 is deceased or she wasn't here to testify. She is one of the  
5 patient witnesses Dr. Russo is charged with. After Dr. -- Dr.  
6 Chiodo confirmed that Dr. Russo provided sound care to Ms.  
7 Morzynske, Mr. Helms got up and asked him a series of general  
8 questions. "What if no physical exam was given," he asked,  
9 "would that be a breach of the standard of care?" "Well,  
10 probably I think or yeah" Chiodo -- Dr. Chiodo may have said.  
11 "What if no informed consent was given, sir, for the procedure,  
12 would that be a breach of the standard of care?" "Well,  
13 probably, yeah, it would." "What if the risks of opioids were  
14 not discussed with the patient, would that be a breach?" You  
15 remember this testimony, right?

16 The problem for the government that this  
17 cross-examination revealed was that they were asking Dr. Chiodo  
18 a series of hypotheticals about facts that did not actually  
19 pertain to the treatment of the particular patient Dr. Chiodo  
20 came to discuss, Ms. Morzynske, or her -- Morzynske or her  
21 actual care.

22 In fact, if you look at the records, and I can give  
23 you the exhibit cite, Ms. Morzynske did undergo a comprehensive  
24 physical examination. In fact, Ms. Morzynske did receive and  
25 then sign an informed consent form for the very procedure Dr.

1 Russo performed, witnessed by a nurse in writing, witnessed by  
2 Dr. Russo in writing. It's in evidence at 119A-4 I believe,  
3 and I can -- yes. In fact, Ms. Morzynske did review or receive  
4 and sign a narcotics agreement.

5 So I bring this up because it -- it's -- shows that  
6 the government questioned Dr. Chiodo about hypothetical -- an  
7 alternate reality, a reality that didn't actually exist. I  
8 call it fantasy land, supposed bad facts that didn't actually  
9 pertain to Dr. Russo's patient.

10 This ten-minute redirect that I did, not that it was  
11 so great, but I think it was important because not only did it  
12 show Dr. Russo is wrongfully being charged for that caudal  
13 epidural steroid injection he provided to Ms. Morzynske, a  
14 procedure that was indicated and objectively verified, no, the  
15 exchange with the government attorney and my redirect is much  
16 more important than that. It's illustrative of the huge  
17 disconnect in the government's claims when placed next to the  
18 real, actual evidence in this case.

19 Dr. Russo's other charge patient, Denise Souligney,  
20 also received a comprehensive physical exam. That's in  
21 evidence at Exhibit 122A. You may recall Ms. Souligney  
22 testified to it telling you she -- Dr. Kufner spent a lot of  
23 time with her that first day. We pulled up her records. I  
24 either did it with her or I think we -- I did it with Dr.  
25 Chiodo. He went over all her surgeries, a complete history and

1 physical. It's all in her records. You can see for it -- you  
2 can see it for yourself.

3           So how can the government contest that exam occurred?  
4 She was their witness. She said it did. The records reflect  
5 it. So are we to believe their claim that despite what she  
6 told us, no exam actually occurred, her medical charts were  
7 somehow manipulated, doctored by the doctors? That's the  
8 government's regular fallback here. It's their standard  
9 default position in the face of evidence showing they're  
10 flat-out wrong. They ask you to accept this alternate reality  
11 despite what we actually know occurred from the mouth of their  
12 own witness even.

13           In reality, comprehensive physical -- physical exams  
14 did occur to MM, that's how she's identified in the indictment  
15 I believe, Ms. Morzynske, and Denise Souligney. Ms. Souligney  
16 still remembers it going on seven years now after it occurred.

17           And this is like -- because they can't prove it, this  
18 is like the government trying to -- they're -- it's claiming a  
19 double negative I like to say. They -- they're trying to shift  
20 the burden because their evidence, their witness fails to show  
21 what they want you to believe it shows. This is a theme that  
22 runs through the government's case the entire trial. They want  
23 you to reject the evidence that's right in front of you, accept  
24 their alternate reality that runs through the entire case. It  
25 has to. They have no other persuasive evidence to show you.

1           Sure, all the important documents and consent forms  
2     are in order, but that shows you the Pain Center doctored them.  
3     Really? Did Ms. Souligney not have a comprehensive physical  
4     exam despite her testimony? Did she not go through the litany  
5     of procedures for her lumbar and sacroiliac pain by Dr. Kufner,  
6     as is in the record and in her charts per her own testimony?  
7     Did the Pain Center make up Ms. Souligney's failed back surgery  
8     syndrome too despite the X-ray in the file showing the hardware  
9     in her lumbar fusion?

10           THE COURT REPORTER: Mr. Margolis, you need to slow  
11     down for me.

12           MR. MARGOLIS: I'm trying to speed up my time for...

13           THE COURT REPORTER: Slow down please.

14           MR. MARGOLIS: I will.

15           Where does such an argument from the government end?  
16     Where can it not go? Was Ms. -- was Ms. Morzynske's MRI fake  
17     too, written by the ghost busters doctor?

18           The medical records, while not perfect, were like any  
19     other doctor's records: messy and not written for retrospective  
20     review, and they were compiled often by separate providers at  
21     different times. You heard Dr. Chiodo on this point. I think  
22     he demonstrated like -- like pulling his hair out and maybe he  
23     said it. He pulls his hair out trying to get his providers to  
24     document better. He told you just because a doctor does not  
25     make a chart note of something doesn't mean it didn't happen.

1 It's common sense.

2 Don't buy this burden shifting argument by the  
3 government when they can't prove the point they are trying to  
4 make. We have no burden to prove anything at all in this case.  
5 Repeatedly claiming records were falsified with no reliable  
6 support is solely intended to mask their evidentiary failures.  
7 It's as simple as that.

8 The government tells us, you all, it's a fraud  
9 factory. Every patient gets a back brace. Every patient gets  
10 opioids on their first visit. Another unfulfilled promise,  
11 alternate reality, fantasy land.

12 Michelle Morzynske never got a back brace. Ms.  
13 McMillion said this in her opening, and I believe she walked it  
14 back because she was confusing Ms. Morzynske with -- with  
15 another patient, but you have the records. I can recite the  
16 exhibit I already cited. She didn't get a back brace. She had  
17 low back pain.

18 Michelle Morzynske did not get a prescription on her  
19 first visit either. She had that full history and physical, no  
20 prescription for Norco, no back brace. This is Exhibit 119B-6.  
21 I may have said B-4 and I apologize.

22 She also was prescribed to go to physical therapy,  
23 she was given a gel pack, again -- oh, and asked to get an MRI.  
24 No back brace, no Norco. The government's expert confirmed all  
25 this for you during my cross-examination. As I said, her



1 chart's in evidence.

2 Here's another uncontested fact from this trial. Dr.  
3 Russo and his colleagues are highly educated physicians who  
4 spent years after medical school in advanced training so they  
5 could specifically treat chronic pain patients. Dr. Russo is  
6 an interventional pain doctor who dedicated his professional  
7 career to treat real people who suffer from real chronic pain.  
8 He had a passion for treating pain.

9 Remember his two-year fellowship, pain fellowship,  
10 and then his post-fellowship advanced interventional pain  
11 techniques training at the renowned Moffett Cancer Center in  
12 South Florida. There Chris treated patients suffering from the  
13 horrific and debilitating pain, late-stage cancer from -- in  
14 cancer patients. That experience of his at the South Florida  
15 cancer center tells you all you need to know about Dr. Russo  
16 and where his heart is.

17 And this is another important point I want you to  
18 remember. And if I keep doing that, I apologize. It's a bad  
19 habit of mine. Dr. Russo is not a general practitioner  
20 moonlighting at an interventional pain clinic to make extra  
21 money, which is something that some doctors do sometimes, and  
22 no disrespect to them. But treating pain, chronic and  
23 debilitating pain was Dr. Russo's only job. This was his  
24 career. Helping these people reducing their pain, trying to  
25 help them cope and manage their pain was his life's work.

1 Christopher is no fraud. He's no illicit drug  
2 trafficker, drug prescriber. He's a highly educated specialist  
3 in chronic -- treating chronic pain. He treated his patients  
4 in good faith and to the best of his abilities and always with  
5 the intent to alleviate their pain.

6 It is why he joined the Pain Center when he did.  
7 Remember, he worked at a successful pain practice in Grand  
8 Rapids. Dr. Russo was recruited to the Pain Center by Dr.  
9 Bothra and his friend at the time, Dr. Kufner. Dr. Russo  
10 accepted Dr. Bothra's offer because it was a good opportunity  
11 to have more independence, work with his friend and serve a  
12 large inner city community, working at a growing pain practice.  
13 He didn't join to defraud Medicare or join some nebulous,  
14 undefined conspiracy. He joined to practice medicine with a  
15 friend to serve a needy community and be closer to his family.  
16 He quit his job in the pain clinic in Grand Rapids to join a  
17 legitimate pain practice in Warren, legitimate business with  
18 real chronic pain patients.

19 Now, the government did present a couple fake  
20 patients to you: the agent and pseudo patient, Andrew Peterson,  
21 and the on-again, off-again, crack smoking Butler Henderson.  
22 I'm not going to get into them; my colleagues did. I will note  
23 that Dr. Russo never met with either of them, never treated  
24 Agent Peterson, never treated Mr. Henderson. There's no video  
25 or audio of Dr. Russo with them. There's no audio or video of

1 Dr. Russo with any patient in this case, the entire case. Dr.  
2 Russo only treated the real patients with real pain, real  
3 imaging. That's the evidence the government presented to you.

4 Which brings me to the next uncontested fact of this  
5 case: diagnosing and treating chronic pain is complicated but  
6 it's based on trust. The practice of pain management, the  
7 practice of interventional pain medicine is not a perfect  
8 science. Pretty much every expert who testified agreed to  
9 that. Where in the body does the pain originate from? What  
10 causes it? How best can the doctor treat it? Once treated,  
11 how long will the pain be gone, how long will it subside? If  
12 it doesn't go away forever, when will the pain come back?

13 These questions remain after a month of trial and can  
14 never be definitively answered. It's not a perfect science.  
15 They try to get rid of the pain. They try to keep it away for  
16 six months with an ablation. They try to get the -- the block  
17 from the -- from the diagnostic. It's not a perfect science.

18 I think every doctor who testified stated this fact  
19 too. They agreed that pain -- pain therapy lessens the pain  
20 but doesn't get rid of it forever. This is true if the chronic  
21 pain patient is on low dose opioid therapy, doing physical  
22 therapy, undergoing ablations every six months. It does not  
23 leave. That's why it's deemed chronic. It's temporary, the  
24 relief is temporary.

25 We all have different etiologies, different physical,

1 biological makeups. What may work for you may not work for you  
2 [sic]. What may work for me may not work for someone else. We  
3 all have different thresholds for pain.

4 We know pain is subjective, we know pain is hidden,  
5 personal to the one feeling it, only known to others because we  
6 are told. We have to rely on a person's report of pain to  
7 understand what state of pain they're actually in. We see  
8 people limp or grimace or walk with a cane like we saw with Ms.  
9 Souligney, but we still don't know exactly how that person --  
10 how she is feeling, we can't. We have to take their word for  
11 it, we have to trust them.

12 Pain specialists, like lawyers, teachers,  
13 accountants, hairstylists, therapists, the rest of us begin  
14 their relationship with their patient with trust, they have to.  
15 It's the same as in every adult relationship, it begins with  
16 trust. Doctors trust us when we tell them our pain symptoms.  
17 We trust our doctors when it comes to their medical advice.

18 If we're not happy with the advice or treatment, what  
19 do we do? We get a second opinion, ask another doctor, go back  
20 to the one who referred us to the specialist in the first  
21 place. We can reject the advice, reject the proposed treatment  
22 or procedure. I said this in my opening and I'll say it again.  
23 No grown person is forced to remain in a professional  
24 relationship. No grown person is forced to keep seeing a  
25 doctor again and again for years if they aren't getting relief

1 from their pain. These were grown people who made their own  
2 health care decisions.

3 The Pain Center provided elective treatment and  
4 elective pain therapy. This wasn't an ER. They traveled to  
5 the Pain Center, they signed a host of informed consents,  
6 opioid agreements, regularly reported pain scores to several  
7 different people, underwent imaging, fasted before their  
8 procedures, endured needles, sedation, had drivers, were  
9 assisted in aftercare rooms for cookies and juice. They  
10 regularly met with doctors, nurses, PAs, MAs, all who took  
11 their pain scores at different times.

12 Some brought their family with them. Some had family  
13 who treated there. Some recommended their friends who suffered  
14 from chronic pain. Dr. Lewis sent his mother to treat at the  
15 Pain Center. The last witness knew Dr. Bothra from decades ago  
16 and treated with him from that time. She got knee injections,  
17 never got pills.

18 This is your evidence, people, most of it provided to  
19 you by the government. How is that not a legitimate practice?  
20 Tell the nice lady who testified last week, I just -- with Dr.  
21 Bothra, I can't remember her name, tell her that Dr. Bothra was  
22 the CEO of a fraud factory and that the nice and caring Dr. Edu  
23 was the factory's vice president. See what she tells you. It  
24 was a fitting end to this trial that it ended with a patient  
25 such as that. No pills, no inducements, nothing but a

1 four-decade long loyalty to doctors she admired and trusted to  
2 care for her and who did care for her. That sweet lady was not  
3 induced to do anything, no patient was.

4 Dr. Russo never forced any patient to undergo any  
5 procedures. There was no testimony presented to you he did.  
6 Ms. Souligney signed all her consent forms, so did Ms.  
7 Morzynske. They're asking you to convict on pain scores, pain  
8 scores given before and after procedures that had sedation,  
9 pain scores given to different people at different times. It's  
10 like the game of electricity: once it goes to somebody else, it  
11 always changes. Can't convict on pain scores. They want you  
12 to convict on pain scores because they can't handle the medical  
13 necessity hurdle they can't get over.

14 Ms. Souligney had been undergoing repeated procedures  
15 from Dr. Kufner. She agreed to everything he did. Said her  
16 pain he was treating was real and she reported relief at her  
17 followups. I know years later she may have said something  
18 different, but in her records she reported the relief. Ms.  
19 Souligney stated it was, quote, implied that she had to undergo  
20 the procedures, but she admitted no one actually required it.  
21 No one told her she had to do it to get her pain pills, not Dr.  
22 Kufner, not Dr. Russo.

23 The government provided you with no evidence Dr.  
24 Russo forced her or any patient to undergo any procedure.  
25 These were grown people he cared for. They too are responsible

1 for their own treatment decisions, and the procedures were  
2 always part of the patient's treatment plans, completely within  
3 the standard of care for an interventional pain practitioner.  
4 Follow the science, examine the evidence, you'll get the result  
5 that I'm talking about. It will show you Dr. Russo diagnosed  
6 and then took steps to provide pain relief. It will show you  
7 that he trusted his patients but verified their pain  
8 complaints. It will show you he followed the science.

9 Remember too another uncontested fact from this  
10 trial. Every expert stated it was reasonable for one  
11 professional to rely on another to inform their treatment  
12 decisions. That was the -- when I was asking those questions,  
13 does the practice of medicine build on itself. Of course it  
14 does, it has to. It would be impossible to have the health  
15 care system that we do without one doctor, one professional,  
16 one provider relying on another provider. It's how it's done  
17 by all providers and it's perfectly reasonable and well within  
18 the standard of care.

19 And this is important because it was Dr. Kufner, if  
20 you may recall, who scheduled the final series of treatments to  
21 Ms. Souligney's sacroiliac joints. Dr. Russo simply followed  
22 Dr. Kufner's plan of care, reasonably relied on his documented  
23 treatment decisions with his own patient and performed the  
24 procedure. And Ms. -- Ms. Souligney agreed to it, she told us  
25 that herself. She trusted Dr. Kufner. She -- she felt --

1 she -- she agreed to everything that he -- that he asked of  
2 her.

3 I asked in my opening statement how just, in fact,  
4 does a pain specialist like Dr. Russo act on his intent to  
5 treat pain? We all learned the answer. I won't go over it  
6 again and again, but that's not a contested issue in this case  
7 either. I think the government spoke on it a little bit in  
8 their closing or maybe in their opening. First you have to  
9 diagnose the origin of the pain to define where the pain comes  
10 from. Then once confirmed, you treat the pain. This is what  
11 Dr. Russo did with his two charge patients.

12 Let's talk briefly about the individual charges Dr.  
13 Russo faces. I'll start with Ms. Souligney because she was the  
14 only patient witness of Dr. Russo's to testify. Dr. Russo is  
15 charged with five individual counts related to two dates of  
16 treatment for Ms. Souligney. This reminds me of Mr. Harrison's  
17 point about the government, quote, overcharging. I don't know  
18 the word he used but it's -- it's -- it's excessive. For --  
19 for two individual dates he's facing five charges. This is  
20 Count 33 and 34 he's charged for the bilateral diagnostic he  
21 performed on Ms. Souligney that was to her SI joints. I  
22 believe Ms. McMillion improperly stated it was her lumbar  
23 facets that were being treated. It's an easy mistake to make.  
24 This is a difficult and confusing case, there's a lot of  
25 different procedures, but I want to make sure you have it



1 right. In 35 and 36 he's charged for the ablation to her left  
2 SI joint that he performed on March 14, 2018.

3 So to make this case against Dr. Russo, they  
4 initially brought in Dr. Mehta, and we all recall Dr. Mehta's  
5 testimony. It started off very troubled when cross-examination  
6 started. There was all the mistakes that were pointed out by  
7 pretty much all the defense counsel.

8 But as far as his testimony relative to Ms.  
9 Souligney, what I believe is important is that he didn't offer  
10 any specific evidence relevant to Dr. Russo's care of her.  
11 He -- and I was -- I pressed him. I wanted him to be specific.  
12 I don't know if you all remember this, but it's a -- it was an  
13 important point, at least for me, during the -- the trial. I  
14 asked him specifically, "What was wrong with the November 16,  
15 2017 bilateral diagnostic?" Dr. Mehta had nothing to say. His  
16 words, "I" -- quote, "I will not be able to answer that."  
17 That's their expert traveling across -- halfway across the  
18 country making \$25,000 to testify against the only named  
19 patient who shows up to testify against my client, and he is  
20 not able to answer what's wrong with that procedure?

21 Similarly, he gave a vague and generalized conclusion  
22 about the March 14, 2018 procedure that Dr. Russo is charged  
23 with in Counts 35 and 36. His testimony, and I -- you may  
24 recall this, it was a long time ago, he was one of the first  
25 witnesses, but I asked him, 'cuz he grouped in his -- in his

1 report -- I asked him about his report, and he had grouped Dr.  
2 Russo's and Dr. Kufner's procedures together with his person,  
3 with Ms. Souligney, and I asked him, "Is -- is your opinion  
4 based upon the number of procedures that -- that Ms. Souligney  
5 received from Dr. Kufner?" And he affirmed, he said yes, it  
6 was, and then he didn't say anything specific as to why it was  
7 medically unnecessary therefore for Russo, Dr. Russo to do what  
8 he did.

9 And I believe he mentioned lumbar facet work that was  
10 done by Dr. Kufner, and perhaps that's a mistake that -- that  
11 Ms. McMillion recalls or -- or the reason she made that to you  
12 this morning, but Dr. Russo didn't do any work to Ms.  
13 Souligney's lumbar facets. Dr. Russo did work to the  
14 sacroiliac joints. And so Dr. Mehta did not provide any strong  
15 evidence of any sort relative to Dr. Russo's injections for Ms.  
16 Souligney.

17 I think -- the government I think attempts to argue  
18 that Ms. Souligney, with all her pain and surgeries and  
19 injuries, did not need the interventional treatments Dr. Russo  
20 provided her, but the evidence clearly showed otherwise.  
21 First, Dr. Mehta never said that Ms. Souligney's SI joints were  
22 fine or that she did not really have any pain there. The  
23 testimony was -- and I think three or four of the experts  
24 talked about the lumbar fusions, failed back surgery. I feel  
25 like I could teach a class on lumbar fusion, failed back

1 surgery now.

2 But what they -- if you recall what they said was is  
3 that failed back surgery -- and I think Dr. Patel said, well,  
4 the surgeons don't -- you know, they take offense to that so  
5 there's a different name for it, but it's still known as failed  
6 back surgery syndrome I should say. It causes osteoarthritis  
7 above and below the plating, the region where the lumbar fusion  
8 occurs.

9 And so there are two distinct pain generators that  
10 are frequent, that are common, that typically occur from such  
11 surgeries, and that is what Mr. -- Dr. Kufner had been treating  
12 this patient in his treatment plan for. He -- he did work on  
13 her lumbar facets, he did repeated work to her SI joints.  
14 Three days before he left the practice he scheduled the  
15 procedure for the diagnostics to -- to confirm again, which is  
16 required, to her SI joints. Dr. Russo steps in, takes over  
17 that patient from her, performs the procedure ordered by her  
18 trusted doctor. Dr. Lewis confirms the blocks work in January.

19 And then interestingly, it's -- Dr. -- because these  
20 ablations -- and there was testimony on this -- because these  
21 ablations are so demanding on the body, especially probably for  
22 someone in Ms. Souligney's fragile, sort of fragile state from  
23 all her surgeries and whatnot, they split it up. You don't do  
24 a bilateral RFA, it's too painful, it's too debilitating, so  
25 you do one one month, one another month.

1           So Dr. Russo did the ablation to her right SI joint  
2     in February. And what's interesting about this, he's not being  
3     charged for that one. He's being charged for the ablation he  
4     did to her left SI joint in March. So if the February  
5     ablation, not being charged for that, that's a concession by  
6     the government that that was a medically necessary, legitimate  
7     procedure. So if the February -- uncharged February ablation  
8     is okay, by default, de facto, the March ablation is okay.

9           Taking this one step further, if the February  
10    ablation was medically necessary, then the November blocks to  
11    even get to the February was necessary too. So by them not  
12    charging on the one, they've agreed that all of them were good.  
13    That's four counts.

14           Both Dr. Mehta and Ms. Souligney testified that the  
15    pain from the failed back surgery syndrome was legitimate and  
16    real. Dr. Mehta admitted it caused the lower back pain and  
17    that SI joint pain is a common pain generator from this  
18    surgery. I apologize for repeating myself.

19           After the March ablation, Ms. Souligney's records  
20    will show, Ms. -- Ms. Bezpalko in April reported that the  
21    patient had received significant relief. And here's what's  
22    important about the last ablation other than the fact that it  
23    was completely legitimate, and it really disrupts the  
24    government's -- destroys, as far as this patient, the  
25    government's inducement theory, and we talked about it with Ms.

1 Souligney I believe as well. But after Dr. Russo completed the  
2 series ordered by Dr. Kufner, Ms. Souligney received no more  
3 injections, yet she kept going to the Pain Center, kept getting  
4 her Norco. So how is that an inducement?

5 Dr. Kufner did 18 procedures over a year and a half  
6 with this patient. Three days before he leaves he schedules  
7 her for another SI procedure, well after -- to be done well  
8 after the six months that he had done the previous one so it  
9 was within the two per year. But Dr. Russo takes over --  
10 Kufner, 18 procedures in a year and a half. Dr. Russo takes  
11 over, completes the series in four months, no more procedures  
12 for this patient. She keeps going to the Pain Center, she  
13 keeps receiving her Norco, and she stays with the place. She's  
14 not induced to do anything. She's not told she can't get her  
15 pills if she doesn't do more procedures. The government calls  
16 Dr. Russo a criminal for literally doing his job.

17 In Count 54 Dr. Russo was charged for being a -- for  
18 being a drug dealer for prescribing Ms. Souligney low dose  
19 Norco on the date of her last SI ablation to her left SI. And  
20 I say drug dealer because seriously, if Dr. Russo was on  
21 federal property selling crack cocaine to Mr. Henderson, he  
22 would be facing the same charge that he's facing in Count 54.

23 This charge, this allegation is absurd. The  
24 government's own witnesses supported Ms. Souligney's pain and  
25 absolute need for this prescription. Ms. Souligney testified

1 she needed it for her pain. Dr. Mehta testified it can help  
2 relieve pain, that he prescribes it still to his patients. Dr.  
3 Chiodo also said it was completely legitimate. Also remember  
4 Dr. Patel prescribed the exact same dosage to Ms. Souligney six  
5 months after the fact for the same pain condition. Patel  
6 prescribed her Norco again the next month for the same pain  
7 condition.

8 Notably, Dr. Russo wrote the prescription that he's  
9 being charged with to take effect five days after the  
10 procedure. Why do I tell you this? Because it shows that he  
11 had reviewed her MAPS report. He knew he wasn't -- she wasn't  
12 due yet. It shows conscientiousness by Dr. Russo and concern  
13 not to give her more Norco than is proper to help relieve her  
14 pain as she testified she needed.

15 Ms. Souligney was also a patient on chronic opioid  
16 therapy. She was on opioids before she even came to the Pain  
17 Center. She had over a dozen surgeries with implants and steel  
18 throughout her entire body. These facts alone warrant or  
19 provide an independent basis for Dr. Russo to prescribe her low  
20 dose opioids when she was due five days after the March 14th  
21 procedure.

22 Dr. Chiodo admitted on cross-exam that Ms. Souligney  
23 complained of pain after the ablation, that pain after  
24 procedures is normal, and that he prescribes Norco for pain to  
25 his own patients.

1           Let's go further with her care. Ms. Souligney was  
2 also being prescribed Xanax by her psychiatrist. Do you all  
3 remember that? The Pain Center, if you remember, did all they  
4 could do with this patient to get her to stop taking her Xanax  
5 with her low dose opioids. They had her try and reduce it, try  
6 to talk to her psychiatrist and get her off Xanax entirely.  
7 Remember Ms. Pursifull? She even disposed of 29 of her pills.  
8 Ms. Souligney called her a witch for doing that. This shows  
9 proper care, conscientious care, and flies directly in the face  
10 of the government's narrative.

11           One other point about her care. Dr. Russo reduced  
12 her prescription 25 percent on the first day he saw her, not  
13 even in clinic but when he did Kufner's previously scheduled  
14 diagnostic in November. We heard from other patients that Dr.  
15 Russo -- that we heard from other patients who Dr. Russo  
16 inherited from Dr. Kufner that he also reduced their Norco by  
17 25 percent. What does the government say about this good-faith  
18 effort to reduce Dr. Kufner's Norco prescriptions? That is  
19 suspicious too, shows evidence of fraud.

20           Clearly, the prescription Dr. Russo wrote on  
21 March 14th to Ms. Souligney was legitimate, prescribed in the  
22 normal course of the treatment of her pain, just like Drs.  
23 Mehta, Gharibo, Chiodo and Patel prescribed to their patients,  
24 just like Dr. Chiodo said was proper in this instance.  
25 Clearly, Dr. Russo wrote this prescription in good faith to

1 treat his patient's pain.

2 I already spoke about how the government inducement  
3 theory failed miserably with this witness.

4 However, even if Dr. Kufner implied Ms. Souligney had  
5 to follow her treatment plan to continue as a patient, and I  
6 think Mr. Harrison touched on this, it does not show any lack  
7 of medical -- actually he didn't but I will later. Even if Dr.  
8 Kufner implied she had to follow the treatment plan to  
9 continue, it does not show any lack of medical necessity for  
10 the injections. Her pain was still there, her pain was still  
11 real, she was still complaining of it. Chronic pain from  
12 lumbar fusions, chronic pain from that failed back surgery  
13 syndrome doesn't go away, it's real.

14 And this is where Mr. Harrison said what I'm about to  
15 say, and recall what Drs. Gharibo and Chiodo said about this  
16 issue. It's not an illegal inducement if it's part of an  
17 established treatment plan, and it clearly was with this  
18 patient. Dr. Kufner also stood by his plan of care for this  
19 patient, said there was nothing wrong with the treatments he  
20 provided to her.

21 Again, Dr. Russo is being charged with crimes for  
22 literally doing his job and doing it well. In Count 32 Dr.  
23 Russo is charged for providing a caudal epidural steroid  
24 injection to Michelle Morzynske. I -- I -- I may have touched  
25 on this. I'll -- I'll speak briefly about it. Ms. Morzynske



1 passed away, she was unable to testify, she was not here  
2 obviously to testify. Dr. Mehta was the sole witness in regard  
3 to this patient's injection procedure, and this was where his  
4 mistakes really, really came to the fore. If you recall, it  
5 came to a head. Mr. Weiss had talked about the mistakes that  
6 were done with his patient with the -- the CESI. I think Ms.  
7 McMillion talked about it briefly in her opening, the -- the  
8 cervical epidural steroid injection, then in the caudal.

9 But when I asked Dr. Kufner, or sorry, when I asked  
10 Dr. Mehta about the mistakes, I said, "Sir" -- 'cuz he had said  
11 in his report that there was no -- that the patient was  
12 complaining of low back pain and there was no reason, no  
13 legitimate medical reason that Dr. Russo would have given her a  
14 cervical epidural steroid injection, and we agree with that  
15 point. Back pain doesn't call for a shot to the neck. And he  
16 had placed that three different times, he had put it in three  
17 different places in his report, and his final conclusion was  
18 patient complained of low back pain, no reason to do a -- a --  
19 a cervical epidural steroid injection.

20 He admitted those were substantive mistakes. He  
21 admitted that he had just found them days before trial. I  
22 think he said that he had spoken with -- with the -- the  
23 prosecutor about it over the weekend, whatever. I asked him,  
24 "Well, okay, sir. Then are you going to retract your opinion  
25 that low back pain caudal epidural was -- was indicated here is

1 a good thing?" And he said, "No, I still wouldn't have done  
2 it."

3 I'm like, "Okay, tell me why." And he said, "Well,  
4 the -- the -- the science has progressed a little bit." We  
5 talked about Dr. Lax Manchikanti, that -- that well-known,  
6 recognized expert. I read the article that said caudal  
7 epidurals for low back pain that has radicular findings  
8 radiating down the legs is the perfect, safe, simple, easy,  
9 best procedure to do. He said, "Well, I know that doc -- I  
10 know that doctor, he is an esteemed practitioner. However,  
11 that was 20 years ago. The science has moved on." And I was  
12 like, "Okay. Well, that's not really the Dark Ages. People  
13 are still doing caudal epidural steroid injections for low back  
14 pain, right, sir?" He said, "Yes, some doctors still do it."  
15 I said, "Okay. Well, then if some doctors still do it, that  
16 means, you know, you're not saying those doctors are  
17 criminals." He said, "I would agree with that statement." So  
18 he was really hedging his bets on that one.

19 It's clear that -- and he also admitted that it is an  
20 effective pain relieving technique. It was just clear that it  
21 wasn't what he would have chosen. That doesn't show lack of  
22 medical necessity. I think he said that he would do the -- the  
23 intralaminar. It's a -- a -- Dr. Chiodo said that there's  
24 pretty much two procedures that would be indicated for what Ms.  
25 Morzynske came in complaining of. You know, her MRI wasn't

1 horrible but it did show findings. It did warrant, it did  
2 verify or substantiate her pain. And Dr. Chiodo said this was  
3 a perfectly fine, perfectly reasonable procedure to do. Caudal  
4 epidurals are done all the time, he does them all the time.

5           Interestingly, when -- I forgot to mention this.  
6 When I was speaking with Dr. Mehta about this, I pointed out  
7 that "is it possible that you made your initial wrong finding  
8 of the cervical -- talking about the neck injection based on  
9 the fact that Ms. Morzynske's husband's chart was also included  
10 in Michelle's file?" The husband Lewis I believe his name was,  
11 he had come to the Pain Center, obvious pill seeker. They  
12 kicked him out, didn't give him any medicine. He was kind of a  
13 jerk I think. And his file, which included an MRI, cervical  
14 MRI report, was included in the wife's file, Michelle's. And I  
15 asked him on cross, Mr. -- or Dr. Mehta, and he said that's  
16 very possible or that's possible that that's why he made the  
17 mistake he did.

18           So it's clear he was not very, what's the word,  
19 reliable. His -- his -- his opinion about why the -- the low  
20 back radicular pain was -- was not warranting a caudal was  
21 not -- not very credible, especially in light of Dr.  
22 Manchikanti's and our expert Dr. Chiodo's opinion that it was  
23 entirely reasonable, entirely proper.

24           I want to briefly address the conspiracy counts,  
25 Count 1 and Count 43. There was absolutely no evidence, others

1 have spoken about this, that any unlawful agreement existed to  
2 practice in any certain way or to prescribe in any certain way.  
3 There's no evidence of any agreement. There's no evidence,  
4 absolutely no evidence that Dr. Russo ever knowingly entered or  
5 agreed -- into an agreement, that he agreed to practice in a  
6 certain way or prescribe a certain way. The government's  
7 conspiracy theory is literally a conspiracy theory.

8           The only facts they showed or argued is that Dr.  
9 Bothra had a meeting where he asked everyone to follow the law,  
10 to reduce the opioids and adhere to the 2016 guidelines. How  
11 is that an illegal conspiracy? It's not. There were no  
12 emails, text messages, voicemails, memos, conversations,  
13 whatsoever showing the existence of any agreement, illegal or  
14 otherwise, tending to show Dr. Russo was part of some meeting  
15 of the minds relating to a conspiracy, no evidence.

16           The actual evidence presented shows only that  
17 Bothra rec -- Dr. Bothra recommending to his staff and his  
18 contract doctors that they follow the government and CDC  
19 guidelines to reduce opioid use in the clinic's patients. A  
20 managing doctor advising the staff to work on reducing opioids  
21 in patient care and to follow the recommendations of the  
22 federal government and the Centers for Disease Control should  
23 be praised by our government. It's the right way to manage a  
24 medical practice.

25           The evidence showed Dr. Russo was an independent

1 contractor, that the doctors were responsible to pay their own  
2 taxes and receive no financial benefit from ancillary services  
3 from prescribing them. The doctors had no responsibility for  
4 submitting billings for reimbursement other than the superbill  
5 and that Dr. Bothra had a large and separate billing  
6 department.

7 The evidence showed that contract doctors like Dr.  
8 Russo were able to and did make their own treatment decisions  
9 and that Dr. Bothra actually encouraged them to be independent,  
10 to make their own individualized treatment decisions. Dr.  
11 Patel testified to this very fact. Dr. Backos and Kufner had  
12 their own patients, practiced in different buildings, exclusive  
13 practices. They too made their own treatment decisions with  
14 their own patients. One cannot conspire -- one cannot  
15 illegally conspire to follow the law, but that is what is  
16 actually being argued to you by the federal government in this  
17 case.

18 Let's talk a little bit about prescriptions.

19 How am I doing on time, Judge.

20 THE COURT: You have just about 15 minutes left.

21 MR. MARGOLIS: Ouch.

22 THE COURT: Maybe a little bit over that, but you're  
23 close to an hour, Mr. Margolis. Go right ahead.

24 MR. MARGOLIS: Thank you.

25 The government makes great hay with the fact that

1 pain doctors working at a busy pain clinic prescribed a large  
2 number of low dose opioids to chronic pain patients over the  
3 years. I've touched upon the long history of the treatment of  
4 pain with opium and opioid derivatives. Opioid therapy,  
5 including chronic, long-term opioid therapy, is still  
6 considered an effective tool to treat pain. Every expert in  
7 this case has testified to this including the government's  
8 expert. They still prescribe opioids to treat their own  
9 patients' pain. It is within the standard of care for doctors  
10 to prescribe opioids for pain including chronic pain. Why is  
11 it now being deemed criminal for Dr. Russo and the others to do  
12 it in their practice? It is a legal and common pain treatment.  
13 And remember, Dr. Russo, unlike Dr. Kufner and Backos, steered  
14 clear of the high dose, long-term, long-acting opioids. He  
15 always stayed on the low end of the CDC's recommendation.  
16 Norco contains Tylenol. It's safe, much less addictive.

17 The government wants you to disregard the science,  
18 the pain, the injuries and look at the number of pills, but  
19 they provide you no context, they don't attempt to. We know  
20 the Pain Center treated over 20,000 patients across the various  
21 providers. Mr. Weiss described the -- we don't prosecute  
22 McDonald's for all the hamburgers. A pain doctor prescribes a  
23 lot of medicine, but again, what is it -- where is the context,  
24 what does it even mean?

25 Why were you not provided statistical analysis? We

1 did not hear if this was high or low compared to other pain  
2 clinics in the area regionally or nationally. We did not hear  
3 where these individual practitioners ranked in the State of  
4 Michigan. I guarantee you if Dr. Russo or any of the others  
5 ranked at the top of the list for similar practitioners, you  
6 would have been told, presented with a bar graph, but you were  
7 not.

8 We did not even hear that that number of pills was  
9 excessive in relation to the number of patients I don't  
10 believe. You all were just given numbers, nothing more, no  
11 contextual evidence. Without any context, those numbers really  
12 don't mean anything except that the Pain Center saw a lot of  
13 patients over the years, and we already knew that.

14 I want to briefly talk about Dr. Kufner and his  
15 testimony and -- and remind or go back a little bit about the  
16 relationship. I think he was an important witness. If you  
17 recall, Dr. Russo and Dr. Kufner trained together at the  
18 Moffett Cancer Center. They became friends over the ensuing  
19 years. Kufner began working at the Pain Center in '14, 2014.  
20 At the time Dr. Russo was in Grand Rapids at the -- the Javery  
21 Clinic. They both thought highly of -- of one another's  
22 surgical skills or -- or -- or skills as a physician. Dr.  
23 Russo trusted Dr. Kufner.

24 Shortly after starting at the PC, at the Pain Center,  
25 Dr. Kufner tried to get Dr. Russo to -- to come join him. I

1 don't know if you all recall that. He made a good sell to  
2 Christopher at the time. He said come across, and Dr. Russo  
3 came over, he met with Dr. Bothra. It was the first time Dr.  
4 Russo had met with Dr. Bothra in 2014. Again, Dr. Bothra made  
5 a large and quite an impression on Dr. Russo. He had a large  
6 staff. Dr. Bothra offered him a job on the spot, but Chris was  
7 not ready to leave Grand Rapids yet.

8 Over the next year and a half Dr. Kufner was -- was  
9 persistent. He -- he -- he wanted Russo, Dr. Russo to join  
10 him. He didn't like -- Dr. Russo also didn't like Dr. Javery.  
11 He was a jerk, he was controlling, he didn't let him have his  
12 own independence. So Chris, Dr. Russo eventually accepted the  
13 offer in '16, 2016, and for the next year and a half Dr. Russo  
14 and Dr. Kufner worked with one another at the Pain Center.  
15 They both signed on as independent contractors as I've  
16 discussed. Dr. Kufner and Dr. Backos had their separate  
17 practices. They had their exclusive patients.

18 In '17 Dr. Kufner began having problems with Dr.  
19 Bothra. Dr. Kufner told Chris, told Dr. Russo that he and  
20 doc -- that they were having problems. Now, remember, Dr.  
21 Kufner was his own man with his own practice. He had his own  
22 way of doing things. He tended to prescribe higher doses than  
23 the others. This was known throughout the practice. He was  
24 also a solid physician, Mayo trained physician. He too cared  
25 about his patients.



1           The difference with Kufner was is that he was  
2 practicing miles away in Eastpointe at a different building out  
3 of the view of the other practitioners. Dr. Backos too,  
4 separate practice, separate building from these doctors. They  
5 ran their own exclusive practices. Both were violating the  
6 law.

7           Dr. Kufner kept a lot from his old friend, Dr. Russo.  
8 Never told Dr. Russo that he had hired a lawyer to investigate  
9 the Pain Center and Dr. Bothra. Never told Dr. Russo that he  
10 had filed that secret qui tam, qui tam lawsuit against Dr.  
11 Bothra and the clinic. Never told him about taking pictures  
12 and notes and documenting the surgical center's regulatory  
13 practices.

14           To be clear, Dr. Kufner did tell Dr. Russo he was not  
15 happy and that he was thinking about leaving Dr. Bothra. They  
16 had this talk. We had a little bit of this discussion on the  
17 witness stand. Dr. Kufner recalled some, not -- not all of it,  
18 but the short of it was is that he kept Russo, Dr. Russo in the  
19 dark. Dr. Russo said, "Tell me what's going on." Dr. Kufner  
20 said, "It's just between me and Bothra, doesn't concern you."  
21 So Chris knew, Dr. Russo knew he was leaving. What he didn't  
22 know is that it would impact him. Remember what else Dr.  
23 Kufner didn't tell Dr. Russo: that he was making the secret  
24 recordings and working for the federal government. He failed  
25 to mention this fact when speaking with his old friend.

1           And remember, I talked about this in opening but I  
2    think it's important, Dr. Kufner had convinced Dr. Russo to  
3    uproot his life, change his career, move from one side of the  
4    state to the other, and he kept all his plotting secret.

5           Dr. Kufner came to testify. You heard him, you heard  
6    him admit to the betrayal of his old friend. It was powerful  
7    testimony that he gave. He admitted to his breach of trust.  
8    He admitted his self-interest, his powerful desire to avoid a  
9    lengthy prison sentence for his illegal conduct he admitted to  
10   doing.

11           The most poignant part of his testimony to me I  
12   believe or the most poignant part of his testimony was his  
13   admission that he kept Dr. Russo in the dark, that he kept all  
14   those secrets from Dr. Russo because he wanted to protect him.  
15   Do you remember that testimony? Think about that for a second.  
16   If your good friend is part of some illegality or -- or your  
17   agreement or conspiracy to violate the law, you have no reason  
18   to protect him. He's already in on it with you. Dr. Kufner  
19   kept his activities secret. He did protect Dr. Russo.

20           The other doctor who testified was Dr. Backos. We  
21   don't have much to say about him and he didn't have much to say  
22   about Dr. Russo. Like Dr. Kufner, he worked in a different  
23   building. Unlike Dr. Russo, Backos was not a pain specialist;  
24   he was an addictionologist. He was with Dr. Bothra in the Pain  
25   Center since 2012. He -- Dr. Russo didn't arrive till 2016.

1 Backos pled to crimes that he committed in 2014, two years  
2 before Dr. Russo even joined the practice. Dr. Backos also  
3 pled to unlawful prescribing, one individual count, not  
4 conspiracy. And Backos, like Kufner, was known to prescribe in  
5 high doses.

6 The evidence showed that both Backos and Kufner had  
7 histories of unlawful drug use and problems with their  
8 licenses. It is not surprising they both pleaded guilty to  
9 crimes they alone committed.

10 We can't forget the young and ambitious Dr. Hersh  
11 Patel. He was the individual who was fresh out of his  
12 residency when he joined the Pain Center. This man was on a  
13 mission to take the Pain Center down before he officially even  
14 joined the practice. He started taping Dr. Bothra, Edu and  
15 Lewis immediately. He never taped Dr. Russo. At least there  
16 was no evidence brought forth by him that he did. This is an  
17 interesting fact to me because actually maybe he did. He was  
18 there for three and a half months, they did work together on  
19 occasion, yet we have no recordings of him talking to Dr.  
20 Russo. He recorded almost nine hours of time with Dr. Lewis  
21 and Dr. Edu, he recorded Dr. Bothra, yet nothing with Dr.  
22 Russo. Or did he record Dr. Russo and just choose not to  
23 provide it? We will never know. What we know is that he  
24 provided no relevant evidence to offer against Dr. Russo.

25 I did say something in my opening about him that I

1 was a little wrong about. You may recall Mr. Helms got up  
2 and -- and objected and the judge let us talk about it, but I  
3 was -- I was not completely accurate and I like to be credible.  
4 I told you in opening that Dr. Patel told the agents when he  
5 had called and said -- 'cuz he did call and say, "I saw a  
6 different side of the clinic today and I am happy to find that  
7 I'm able to practice medicine my own way." That he did do and  
8 that's an important point.

9 What I took from that before the evidence came in was  
10 that he had said he was wrong and was expressing doubts, and  
11 therefore, you know, he -- he was waffling back and forth. I  
12 was wrong. The evidence did not show this. I was actually  
13 giving the guy too much credit. He did say he saw a different  
14 side and that he was happy to find that he was able to  
15 practice, and he admitted the same when I cross-examined him.

16 Remember he said he was free to prescribe how he  
17 wanted, free to not prescribe Norco or opioids at all. He said  
18 he was free to threaten and dismiss patients as he saw fit.  
19 Oh, he was -- that was when I was questioning him about --  
20 remember he was threatening those patients with arrest. He  
21 threatened that 72-year-old lady, which was -- was not very  
22 nice.

23 But if what Dr. Patel said is true, that Dr. Bothra  
24 allowed -- that everybody had their own ability to be  
25 independent, make their own treatment decisions, prescribe as

1 they wanted, kick out as they wanted, threaten with  
2 incarceration as they wanted, then that evidence given by Patel  
3 in the midst of his cooperating with the government goes to the  
4 heart of the government's conspiracy counts.

5 Dr. Patel's testimony was all over the board. He  
6 defended the prescription to Henderson Butler but not the  
7 legitimate pain patients he saw. He told you he didn't quit  
8 because he was worried about breaking his contract with Dr.  
9 Bothra, yet this former NYU chief resident also told you he had  
10 no problem handing out Norcos illegally. It made no sense. It  
11 was completely unreliable. Dr. Patel was only concerned about  
12 Dr. Patel and the money he can make, the doctors he can take  
13 down and make a name for himself. This is what his ambitious  
14 actions and his testimony revealed. He was the most biased  
15 witness in the entire case. He did provide us that kernel,  
16 however, that the doctors at the Pain Center had their freedom  
17 and independence to practice as they saw fit.

18 THE COURT: Okay, sir. We better start wrapping up.

19 MR. MARGOLIS: Thank you, Judge.

20 THE COURT: Yep.

21 MR. MARGOLIS: The role of the jury, I will conclude  
22 with that. The Court is going to instruct you on the law.  
23 It's vitally important that you follow it. Your biggest role  
24 here with Dr. Russo in my humble opinion is to evaluate the  
25 evidence against him individually. What did the government

1 specifically prove to you about the charges he individually  
2 faces about his care of patients? Those are the questions I  
3 would suggest that you ask, separate and distinct from your  
4 consideration of the other men.

5 I told you in opening that this is a complicated  
6 case. I don't believe that's the case anymore. We did deal  
7 with unusual and arcane subject matter to be sure, but a lot of  
8 this is just simple, plain old common sense. If you find  
9 yourself struggling to find the evidence, then you found your  
10 answer. If you find yourself searching for support of the  
11 government's claims, then you already know you have strong  
12 doubts. Maybe you start by asking yourself what did the  
13 government tell you their evidence would prove to you? Did his  
14 three bucket fraud theory hold up? Did they meet all their  
15 promises to you?

16 Please also remember that much of the evidence  
17 presented had nothing to do with Dr. Russo. There was very  
18 little evidence actually relevant to him, his charges presented  
19 in this case. Many of the witnesses, most maybe, I asked no  
20 questions to because they said nothing about Dr. Russo. You  
21 have no recordings or in the room accounts of Dr. Russo's care  
22 from any non-patient witness, and there was only one actual,  
23 maybe two, patient witnesses that testified.

24 Think about his late arrival to the practice, his  
25 extended leave due to surgeries.

1           Think about why it was Dr. Kufner kept his activities  
2       secret from Chris and his desire to protect Dr. Russo.

3           There is a complete lack of evidence implicating Dr.  
4       Russo in any crime. It's not my job to provide it. We have no  
5       burden at all. That's all on them, and it's a steep one. They  
6       had years to investigate and over a month of trial to prove  
7       their fraud factory and unlawful prescriptions theories. They  
8       failed to meet their burden. They didn't prove Dr. Russo  
9       intended to do anything wrong or that he did do anything wrong.  
10      They failed to prove he committed health care fraud or  
11      unlawfully prescribed outside the scope of normal course of  
12      practice.

13           And when I began I said -- I first said in a case  
14      like this with these horrendous, serious crimes being charged,  
15      you would expect the government to put forth overwhelming  
16      evidence of Dr. Russo's individual criminality. I told you  
17      they would not be able to come close, and they didn't, not on  
18      this evidence.

19           Do not convict Dr. Russo on the alternate reality  
20      they ask you to accept. Do not convict him on speculation and  
21      false narratives. The Pain Center was a legitimate business  
22      practicing specialty pain care. That's the reality Dr. Russo  
23      lived in when he went to work every day. Dr. Russo became a  
24      doctor to serve our communities. He continued on to become a  
25      specialist in pain medicine because he had a passion for

1     treating complicated patients and he was good at it. That's  
2     the reality we offer you, that's the reality Dr. Russo lived.

3             You all have a tremendously important role in our  
4     system. It is too ensure justice. Be just to Dr. Russo, be  
5     fair. His entire fate, his future, his freedom is in your  
6     hands. Do not convict an innocent man. Dr. Russo is an  
7     innocent man. Please put an end to this awful, yearslong  
8     nightmare for Dr. Russo and his family. Thank you.

9             THE COURT: Okay. Mr. Margolis, thank you very much  
10    for those remarks.

11            (Excerpt concluded at 2:55 p.m.)

12                             — — —



C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 48 comprise a full, true and correct transcript taken in the matter of United States of America vs. D-1 Rajendra Bothra, D-3 Ganiu Edu, D-4 David Lewis and D-5 Christopher Russo, Case No. 18-20800, on Friday, June 24, 2022.

s/Linda M. Cavanagh  
Linda M. Cavanagh, RDR, RMR, CRR, CRC  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: July 14, 2022  
Detroit, Michigan